

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
:
v. : 21-CR-563 (EK)
:
ROGELIO VEGA, : January 5, 2022
:
Defendant. : Brooklyn, New York
:
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TRANSCRIPT OF CRIMINAL CAUSE FOR BAIL APPLICATION
BEFORE THE HONORABLE PEGGY KUO
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 THE CLERK: Criminal cause for bail
2 application, U.S.A. v. Rogelio Vega. The case number
3 is 21-CR-563 and we're doing this bail hearing via Zoom
4 video and audio.

5 May I have the parties state their name for
6 the record? For the government please?

7 MR. CAMPBELL: Patrick J. Campbell for the
8 United States. Good afternoon, your Honor.

9 THE COURT: Good afternoon.

10 THE CLERK: Thank you, Mr. Campbell. And
11 for the defendant please?

12 MR. DARROW: Good afternoon. James Darrow,
13 Federal Defenders of New York, for Mr. Vega. As you
14 can see, I'm on video link, your Honor, and Mr. Vega is
15 patched in from the MDC by telephone. I wanted to say
16 we do consent to that. In light of the lock-down, we
17 wanted to make the bail application as soon as we
18 could. So in light of the ongoing pandemic and the
19 lock-down, we consent to proceeding in this fashion.
20 Also on the line, your Honor, are a number of proposed
21 suretors. I don't know whether we have all of them but
22 if we get to that, I can figure that out for your
23 Honor.

24 THE COURT: All right, thank you, Mr.
25 Darrow.

1 Mr. Vega, can you hear us okay?

2 THE DEFENDANT: Yes.

3 THE COURT: Your lawyer said that it's okay
4 with you for us to proceed even though we're on video
5 and you're on audio, so you can't see us but you can
6 hear us.

7 THE DEFENDANT: Yes.

8 THE COURT: Is that okay with you?

9 THE DEFENDANT: Yes.

10 THE COURT: All right, so let's proceed
11 then. I understand that Mr. Vega was before the Court,
12 he did not have a bail package and he was detained.
13 I've seen that there's a detention memo that the
14 government filed with an addendum. There was also an
15 update to his bail or the Pretrial Services report
16 because it sounds like there were some state charges
17 that have now been resolved.

18 So let me hear first from Mr. Campbell, if
19 you want to add anything to your detention memos.
20 Also, I'm interested in understanding the sequence of
21 the events that are at issue here and also in the state
22 case, because I don't have a clear picture of the
23 things that Mr. Vega has admitted to doing in the state
24 case and then, also, what he's alleged to have done
25 here.

1 MR. CAMPBELL: Yes, your Honor, thank you.
2 So let me start there with the factual issues and the
3 state case. My understanding is that he was arrested
4 in January of 2021 by the NYPD as the result of an
5 undercover operation where the defendant was
6 communicating with who he believed to be a fourteen-
7 year-old boy, solicited the individual for sexually-
8 explicit images and to meet up for sexual acts. Then
9 Mr. Vega was arrested as part of a sting because the
10 undercover officer arranged to meet him and he did meet
11 him. Those charges were disposed of in October of
12 2021. The defendant pled guilty to the state charge.
13 He was sentenced -- I believe yesterday, he was writted
14 out to state court to be sentenced. The sentence in
15 that matter was ten years' probation. He as a result
16 is subject to probation conditions.

17 And one thing to add to the government's
18 submission is that in addition to the issues raised
19 with the potential Florida residences, it's my
20 understanding from speaking to Pretrial that his
21 probation under the New York State conviction would
22 prohibit an immediate relocation to Florida. He would
23 have to go through a process where he applies for
24 relocation, he would have to be approved for relocation
25 before that would be an option, in addition to the

1 other reasons set forth in the detention memo.

2 As to the facts of this case, as a result of
3 the defendant's January 21 arrest for the state charge,
4 the government seized a number of cell phones from him.
5 The government applied on the federal level for search
6 warrants to search those phones and recovered
7 communications with a number of victims going back to
8 2015. The government's charges cover the period from
9 2015 through January, 2021, when the defendant was
10 arrested on state charges. Those are detailed in one
11 of the victims (ui) in the complaint. The grand jury
12 has returned an indictment charging him with five
13 charges, three of enticement of minors, one of
14 possession of child pornography, and one for
15 production.

16 I believe that answers the questions that
17 your Honor had. I'm happy to go through what's in the
18 detention memo but to the extent that you've read it,
19 we're also happy to rely on that.

20 THE COURT: All right. You don't need to
21 repeat it but I understand that this is a presumption
22 case. You said that he's also now facing a mandatory
23 minimum of a sentence of fifteen years if he's
24 convicted on the most serious charge?

25 MR. CAMPBELL: That's correct, your Honor.

1 THE COURT: Can you tell me, and perhaps Mr.
2 Darrow might know more details about the conditions of
3 the defendant's probation and whether there are --
4 other than not being able to live in Florida, if he
5 were to live in New York, whether there are things that
6 the Court should be aware of in trying to fashion the
7 proposed bail package here to comply or to fit together
8 with the probation.

9 MR. CAMPBELL: Your Honor, I can make an
10 attempt.

11 THE COURT: Okay.

12 MR. CAMPBELL: And Pretrial may as well have
13 additional information because they have been in
14 communication with the probation and supervision on a
15 state level. My understanding is that he is subject to
16 registration. He was I believe classified by the
17 Court. I don't know what his conditions -- what his
18 classification is and what conditions were imposed with
19 respect to that, except for the fact that he would not
20 be eligible to immediately move on his own volition out
21 of state. He would need to approve it through his
22 state probation and go through the state process. But
23 other than that, your Honor, I just don't know what his
24 conditions are.

25 THE COURT: Okay. Mr. Darrow, before I turn

1 the floor over to you, I also am interested in
2 understanding based on your proposal what access to
3 electronic devices your client would have and then also
4 his proximity to minors.

5 MR. DARROW: Your Honor, I can address those
6 things. Does it make sense for the record for me to
7 make clear what my proposal is in specifics, and then I
8 can go through each of those concerns. Does that make
9 sense?

10 THE COURT: Yes, it does, go ahead.

11 MR. DARROW: Okay. So we're prepared that
12 Mr. Vega be released to home confinement with
13 electronic monitoring. In the first instance, at his
14 prior residence, the Maspeth home of his daughter
15 Carmen, who is on the line, with a \$250,000 bond,
16 although the government makes note in its supplemental
17 submission and says that in its view, that amount is
18 too low given the high number of suretors we've
19 proposed, we're happy to have that increase. We're not
20 tied to that amount.

21 Normally, what I do, your Honor, is I try to
22 add up folks' yearly income. If I did the math wrong,
23 that's my fault, so we can increase that amount if it's
24 warranted. It would be secured with the residential
25 property of my client's father, who has the same name,

1 where we understand there's \$66,000 of equity in that
2 home in Georgia. And as I mentioned, a total of seven
3 potential co-signers, all of whom I believe were
4 interviewed by Pretrial and maybe the government. It
5 would be the Adam Walsh Act conditions that apply
6 mandatorily, including full surveillance of any
7 internet electronic devices.

8 Regarding the residence, the two issues that
9 your Honor raised -- regarding the minor children,
10 those are the children of Carmen Vega, whose home it is
11 and whose on the phone. She has been advised of the
12 charges and has consented to his presence. I'll note
13 that there's no allegation of harm to minors so young.
14 The alleged victims here were teenagers. But if the
15 Court believes that that is a problem, that Ms. Vega,
16 Carmen Vega, her judgment should be superseded, then we
17 see two solutions:

18 One would be for my client to reside in any
19 of the other suretors' homes in Florida. They have all
20 consented to that or most of them have consented to
21 that, and we would be happy to investigate the
22 logistics of that if the Court wants. We haven't yet
23 investigated what each one of those possibilities would
24 be but I would be happy to do so and then come back to
25 the Court.

1 I'm hearing for the first time -- I wasn't
2 aware that there was a relocation condition because I
3 also wasn't aware of the details of the sentence
4 imposed yesterday until this morning. But of course,
5 Mr. Vega it sounds like would have to go through that
6 process. But if you were in any event investigating
7 logistics, we would be going through an investigatory
8 process in any event, so I think that collapses into
9 the same issue.

10 But the other possibility, your Honor, if
11 your Honor has concerns about the minor children that
12 aren't alleviated through the proposed package, and for
13 reasons I'll explain, we don't think there should be
14 those concerns. But if there are, then another
15 possibility we understand is for Ms. Vega, Carmen
16 Vega's home to potentially be converted so that the
17 client's floor would have its own separate entrance.
18 Again, we haven't gone into detail about how much time
19 that would take or what would fully be involved, but I
20 gather that in theory, that is at least a possibility,
21 so it's something we could explore if necessary.

22 I do want to note regarding our alternative
23 proposal that the client live in Florida, the
24 government's detention memo suggests that his presence
25 there would I guess constitute a severance of his ties

1 to the community. But the truth is, the opposite is
2 the case. He would be closer to his elderly father,
3 who lives in Georgia, and he would be surrounded by
4 most of the suretors who we are proposing. So we
5 believe that his presence there would involve strong
6 ties to the community.

7 I guess I should back up and make clear our
8 larger point, which is that the question is not only
9 the severity of the alleged conduct or whether Mr. Vega
10 presents a risk of flight or danger to the community at
11 all. It's not. It's whether he presents a danger or a
12 risk of flight under the conditions that we're
13 proposing. And in that regard, we believe it's
14 substantial evidence, which we are obliged to put
15 forward in a presumptive context, but we believe it's
16 substantial evidence that he was previously released on
17 bail in state court after -- and was released after
18 having pled guilty to a related offense to one of those
19 charged here.

20 I'll note that the other currently charged
21 offenses, as the prosecutor just made clear, are
22 alleged to have preceded that state conduct and
23 apparently only came to light after the government
24 searched my client's devices in connection with the
25 state case. So I don't believe there's any allegation

1 of any offense occurring while my client was under
2 supervision, and the fact that the sentence that the
3 state judge saw fit to impose was probation is hardly a
4 sentence for someone who had been adjudicated by that
5 authority at least to be a risk of flight or a danger
6 to the community. In fact, another judge has
7 considered at least some of these facts and determined
8 that supervision was adequate, which we believe is
9 powerful and persuasive evidence that he wouldn't be a
10 danger to the community under the supervision
11 conditions we've proposed.

12 The government in the detention memo refers
13 to the charged offense conduct as incredibly serious
14 and makes much of the applicable mandatory minimum, but
15 it overstates the matter. The detention memo says that
16 a mandatory minimum of the count here flatly means that
17 no combination of conditions can assure a defendant's
18 appearance, but that's not the law. It's not what the
19 cases that the government cites say, and the purpose of
20 the Adam Walsh Act, which applies in this case just as
21 it does in other incredibly serious mandatory minimum
22 cases involving child victims, is to set appropriate
23 bail conditions in just such a context. The Act
24 wouldn't exist if each one of those charges always
25 required detention.

1 The question here is, just as it is in
2 another case, whether the danger to the community and
3 risk of flight can be alleviated under the conditions
4 we're proposing. We are proposing some of the most
5 restrictive conditions that are possible. Mr. Vega
6 would not be leaving his home, except for extraordinary
7 reasons. He would have no unsupervised access to the
8 internet and thus no ability to continue to perpetrate
9 the charged offense conduct even if he wanted to.

10 In answer to your Honor's question about
11 devices, the government speaks in its detention memo
12 about other people's devices. Well, let me back up and
13 say, the usual way this works, as your Honor knows, at
14 least in my experience, is that Pretrial Services would
15 either order removed from the home or would password
16 protect or otherwise lock any fixed internet-capable
17 devices in the home. So for example, if there was a
18 television that had an internet capability on it, the
19 television would either have to be disabled or removed
20 from the home, or it would have to be password
21 protected. I say that because I have particular
22 experience with that particular type of device.

23 So for the fixed devices, that's the way
24 that Pretrial does it. I don't mean to speak for
25 Pretrial. I'm just giving color in answer to your

1 Honor's question. And in terms of movable devices,
2 this isn't the first case where that issue has been
3 presented. Pretrial is well-versed in dealing with
4 that problem. In my own experience, the solution to it
5 has several options, including prohibiting any such
6 devices from the home entirely, insuring that such
7 devices are password protected and so forth.

8 At bottom, the government speculates that
9 Mr. Vega could for example order a device by mail, for
10 example. But there's no evidence that Mr. Vega has
11 ever failed to comply with supervision in any respect,
12 let alone in such an extraordinary respect, so there's
13 no evidence that he would do such a thing. There's
14 always the remote possibility of noncompliance in any
15 bail order but without evidence that such a possibility
16 would happen, that speculation can't control the day.
17 Look, in any event, he would be subject to random
18 search and confined to his home, so he wouldn't be able
19 to avoid detection by mail ordering a phone because it
20 would just be found.

21 The main point, your Honor, is that he has
22 no incentive to do that. What his incentive to do
23 (sic) is to comply just as he would doing on bail
24 previously, because he needs to show Judge Komitee that
25 he is and can be law-abiding. He also, it should be

1 mentioned, has the livelihood of seven family members
2 and friends to consider, including the home of his
3 elderly father. There's an extraordinary outpouring of
4 support here from the people who know Mr. Vega best,
5 which is a testament to his motivation and ability to
6 comply.

7 There are two others matters, too, that I
8 wanted to raise with your Honor relating to his current
9 conditions of confinement. The first is this: The
10 bail report notes that Mr. Vega is diabetic and suffers
11 from pancreatitis. So even before the current Covid
12 lock-down at the MDC, Mr. Vega's blood sugar was
13 extremely high because the insulin that was being
14 provided was being provided at sporadic times, and I
15 have numbers here if your Honor is interested. But the
16 main point is that his numbers are extremely high, both
17 as to his insulin but also as other chemicals whose
18 name I can't pronounce, which could cause a dangerous
19 reaction in his pancreas.

20 The problem with the current lock-down, your
21 Honor, is that medication is being administered even
22 more sporadically, which puts him in danger even apart
23 from the presence of Covid in the jail. As your Honor
24 knows, the numbers have skyrocketed. At last count, I
25 think it was more than 12%, perhaps up to 15% of the

1 total population of the prison is now infected with
2 Covid. That alone of course for somebody who has a CDC
3 high-risk factor for Covid is a serious problem, but
4 the main issue, your Honor, is that the medical
5 treatment, which the MDC has not covered itself with
6 glory in administering under normal circumstances,
7 poses a real problem to his health now.

8 The other issue relates to the case. The
9 lock-downs -- currently, as your Honor is aware,
10 attorney visits can't take place in person. And while
11 we do have the ability to have some hour or hour-and-a-
12 half-long video calls, even that more recently have
13 been unable to take place or be converted to telephone
14 because of problems such as the one we're having now
15 but problems with I take it equipment in the facility.

16 The issue with the case, your Honor, is that
17 the discovery here is voluminous. It consists partly
18 of extremely voluminous and lengthy messages, internet
19 messages, which we cannot send to Mr. Vega at the
20 facility for security reasons. What that means is, we
21 have to take them to him and go over them with him
22 together, so that takes a great deal of time. The
23 government rightly wants to move this case quickly. We
24 had a plea offer that has already expired because it
25 wants to move the case quickly, but I'm in a position

1 now because of the lock-down where I cannot move this
2 case forward really at all. So having Mr. Vega at
3 liberty would permit me to go to his house and review
4 the discovery with him, which is just something that
5 just has to happen for the case.

6 So I think those other matters may not move
7 the needle absent anything else. I'm not suggesting
8 that those things warrant release in and of themselves
9 but I think they're important bail factors to consider
10 along with the other context.

11 THE COURT: Thank you, Mr. Darrow. In the
12 state case, if you know, when your client was released,
13 I believe it was a \$50,000 bond.

14 MR. DARROW: That's my understanding as
15 well.

16 THE COURT: And he made his -- his showed up
17 in court as required.

18 MR. DARROW: I believe he did. I have no
19 information to the contrary but my understanding from
20 counsel is that he did.

21 THE COURT: So I hear all the things that
22 you're saying about the difficulties in getting to MDC,
23 the conditions there and so forth. I am -- so I'm
24 willing to work with you to see if we can come up with
25 conditions to have your client in the community rather

1 than confined during this pretrial period. However, I
2 am concerned about safety and in a case where the
3 allegations are about not just possession of child
4 pornography but also with actual enticing of minors and
5 sexual acts, I am concerned about the safety of minors
6 that your client may be in touch with, in contact with.
7 So the fact that there are minors in the home that
8 you're proposing he reside at causes me concern, and
9 I'm not -- I'm not persuaded that just because they're
10 younger, that somehow they're not at risk.

11 Obviously, it's very hard to predict what is
12 likely to happen. But in this particular area of
13 criminal charges, I do have concerns about not just the
14 motivation to comply but not having any temptation,
15 let's put it that say, where he's in daily contact as
16 it were with minors such that there could be a problem
17 and that they would somehow not be safeguarded. I
18 appreciate that the mother has made a decision that
19 it's okay but I would like more to show that they would
20 not be at risk being in contact with your client, so
21 can you speak to that issue?

22 MR. DARROW: I can, your Honor. It may be
23 on us in light of that concern to come back to the
24 Court once we've had an opportunity to investigate the
25 logistics of the other options that I outlined, both

1 the possibility of a separate apartment where my client
2 would be living alone and we could have an order
3 barring any children in that apartment, for example, or
4 the possibility of a Florida alternative residence.
5 The latter option, we would have to sort out the
6 probation angle. I'm confident we could.

7 The government raises an issue that I had
8 not anticipated or didn't fully understand, which is
9 that the government's understanding is that the Middle
10 District of Florida, which the government says and I
11 accept this, I don't know, is the applicable district,
12 does not have the capacity to do electronic monitoring.
13 It seems to me I've had clients who have been monitored
14 electronically by the Eastern District even though they
15 have been in other districts, so I don't know whether
16 that's possible but it is a thing that I could look
17 into as well to try to solve that problem, too.

18 Your Honor, does it make sense for me to
19 take the next week or so to try to investigate those
20 problems and then come back to the Court with a more
21 specific alternative proposal?

22 THE COURT: I think so, although I would
23 also note that I'm not thrilled about a Florida
24 solution because it is so far away, it's hard to
25 monitor. And with the state court, you'd have to work

1 out the probation conditions, if it's even possible.
2 It may not be possible because of the supervision in
3 that case. So if you come back with a package that
4 very clearly addresses these concerns, both the
5 logistics and the safety of minors, and then also the
6 issue of the electronic devices -- I know that in other
7 cases, we have dealt with electronic devices being
8 locked down and things like that.

9 I'm less concerned with him getting new
10 devices and more concerned with him having access to
11 current devices. Password protection is one thing but
12 I think that's really the only thing that would work
13 here because if he's living with another person, that
14 person is surely going to have other devices, and I
15 don't know that that person would voluntarily give up
16 access to those devices.

17 So it would be twofold, or actually, it's
18 three-fold. So it would be about not having contact
19 with minors let alone living with them, number one;
20 number two, the access to electronic devices and how
21 safe -- how the Court can be assured that he won't have
22 access to somebody else's devices in his living
23 condition. The third is, if your only alternative is
24 one that's out of state and you're looking at Florida,
25 then you need to clear up whether it's possible with

1 the state probation and what that would look like,
2 living down there, again his living conditions there
3 and whether it's possible to monitor him in the Middle
4 District of Florida.

5 So there are a lot of different things that
6 I don't have the information for but if you can look
7 into it, I would be open to having you come back. I
8 don't know logistically whether -- I know I'm raising
9 these concerns but if you come back next week and I'm
10 not on criminal duty, it will be a different judge.
11 I'm going to presume that you'll just have to go to the
12 other judge, but you can present to that judge that I
13 raised these issues and that's what you're addressing.

14 MR. DARROW: Your Honor, I'm happy to do
15 that if that's what your Honor wants. I have in the
16 past, when things get complicated like this, just
17 directed the renewed application to the same judge
18 because your Honor has already started with the file.
19 Other judges have accepted that but I'll do what your
20 Honor wants. I think it would be our preference not to
21 retread ground but I'll do what your Honor wants in
22 that regard.

23 THE COURT: Mr. Campbell, do you have any --
24 I'm happy to retain it. If I'm not on duty, I can't
25 guarantee what the timing of my schedule will be so

1 that might be a little more complicated. But in theory
2 or in concept, Mr. Campbell, do you have a problem with
3 my continuing with the case? I'm happy to continue
4 with it but I want to get your input.

5 MR. CAMPBELL: Your Honor, the government
6 does not have an issue. We agree, for efficiency, it
7 does make sense if your Honor is willing to keep the
8 case for a re-hearing.

9 THE COURT: Okay. So why don't we do that
10 and I'll let my deputy know or the magistrate clerks
11 will let me know when this comes up and as the
12 information comes in, it will be relayed to me. And
13 then through my deputy, we'll set a schedule for a
14 continued bail hearing.

15 MR. DARROW: Yes, your Honor.

16 THE COURT: Mr. Campbell, did you have
17 anything you'd like to add?

18 MR. CAMPBELL: No, your Honor, thank you.

19 THE COURT: Thank you, Mr. Darrow.

20 Thank you to everybody who has been here
21 today. We are going to have another meeting at some
22 later point but thank you for your participation today.

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18 I certify that the foregoing is a correct
19 transcript from the electronic sound recording of the
20 proceedings in the above-entitled matter.
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25 ELIZABETH BARRON

January 13, 2022